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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture
Fifty-fourth session

Summary record of the 1309th meeting
Held at the Palais Wilson, Geneva, on Friday, 1 May 2015, at 3 p.m.

Chairperson: Mr. Grossman

Contents

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Fifth periodic report of Colombia (continued)

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Fifth periodic report of Colombia (continued) (CAT/C/COL/5; CAT/C/COL/Q/5; HRI/CORE/1/Add.56/Rev.1)

1. *At the invitation of the Chairperson, the delegation of Colombia took places at the Committee table.*

2. **Mr. Rodríguez** (Colombia) said that the Constitution (art. 12) prohibited enforced disappearances, torture and cruel, inhuman or degrading treatment. Articles 137 and 178 of the Criminal Code dealt with torture in the context of an armed conflict or in other contexts. As neither article required the identification of the perpetrator as a public official, the definition was broader than that in the Convention. Article 146 dealt with inhuman and degrading treatment and biological experiments on protected persons during an armed conflict, and articles 166 and 181 provided for harsh penalties in cases of enforced disappearance. In addition, the Criminal Code had more than 400 provisions sanctioning attacks on, inter alia, a person's life, personal integrity and liberty. Under Act No. 734 of 2002, public officials who committed acts of torture or ill-treatment were dismissed from office.

3. Under article 83 of the Criminal Code, the statute of limitations was 30 years from the time of commission of an act of torture and from the time of discovery of the victim or the victim's remains in the case of enforced disappearance. When such acts constituted crimes against humanity, they were not subject to a statute of limitations.

4. Evidence obtained under torture was inadmissible pursuant to article 29 of the Constitution in both criminal and administrative proceedings. The Constitutional Court, in judgement C-591/2005, had ruled that evidence obtained under torture or through enforced disappearance or extrajudicial killing was inadmissible.

5. **Ms. Abadía Cubillos** (Colombia) said that the Government's current policy in the areas of criminal law and incarceration was based on the principle that deprivation of liberty should be reserved for the most serious offences. The High Council on Criminal Policy disapproved of draft legislation that sought to introduce disproportionate penalties. Crime prevention policies were deemed to be the most effective means of tackling social conflicts. Unduly harsh penalties that failed to serve the aim of prevention were being reviewed under the new policy. Alternatives to incarceration were also being developed.

6. The Government planned to build, expand and renovate a large number of prison facilities, providing additional capacity for about 12,000 inmates by 2018. It had adopted new regulations in 2014 that required the adoption of a gender-based approach in building and renovating facilities for women detainees. A Decree adopted in 2013 regulated cases of children under 3 years of age who lived with their mothers in prison facilities and the situation of pregnant and nursing mothers who were deprived of their liberty. Women incarcerated in male facilities were invariably detained in separate wings and supervised by women wardens. There were currently 1,671 women prison wardens in Colombia.

7. Pretrial detainees enjoyed constitutional and legal safeguards. Criminal charges of unlawful deprivation of liberty could be brought against public officials. Nobody could be detained for more than 36 hours without being brought before a supervisory judge, who decided whether the legal requirements for detention had been fulfilled.

8. Persons deprived of their liberty could lodge complaints concerning irregular detention conditions and ill-treatment by prison staff through the department of the Ombudsman's Office responsible for criminal and prison policy, prison human rights

committees or the Human Rights Ambassadors of the National Prisons Institute. The figures for convictions and disciplinary sanctions did not yet reflect the existing situation, but measures were being taken to remedy that situation.

9. Prior to the adoption of Act No. 1709 of 2014, solitary confinement had been used for disciplinary purposes. The special treatment units could not, under any circumstances, be used to punish detainees. Act No. 1709 had greatly improved the facilities for conducting a preliminary medical examination of all persons deprived of their liberty. The results of the examination were recorded and the regulations required immediate treatment of any symptom of ill-health. A similar examination was conducted and recorded when the detainee was released. Act No. 1709 had also established the National Health Fund for Persons Deprived of Their Liberty.

10. Inter-agency committees composed of representatives of the Ministry of Justice and Law, the National Prisons Institute, the Ombudsman's Office and the Counsel General's Office monitored compliance with the existing regulations governing places of detention.

11. **Mr. Soler** (Colombia) said that articles 37, 20, 38, 2 and 40 of the Constitution guaranteed the right to freedom of peaceful assembly and association, freedom of expression, freedom of movement, and the right to participate in political affairs. The use of force was regulated by international legal instruments and the National Police Code. Law enforcement officers were entitled to use physical force or weapons only to preserve law and order and to protect the community's property. Force should be used in a reasonable and proportionate manner in accordance with legal rules and ethical principles.

12. Demonstrators were required to respect the rights of other citizens and law enforcement officers. During demonstrations in 2014, for example, 93 police officers had been seriously injured. Investigations and detention orders under such circumstances were entrusted to independent prosecutors and judges. Conduct that led to arrests included blockage of public highways, attacks on law enforcement officers and unlawful possession of weapons or explosives. Legal and disciplinary proceedings were being conducted against law enforcement officers in response to complaints of excessive use of force.

13. Legislative action was being taken to ensure that legal proceedings concerning human rights violations committed by members of the armed forces, particularly torture, extrajudicial killings and gender-based violence, were conducted by the ordinary courts and that there was no conflict of jurisdiction.

14. Under the proposed constitutional reform of the military criminal justice system, the military courts would try cases involving offences perpetrated against international humanitarian law by members of the armed forces in active service. They would not, however, try cases involving crimes against humanity, genocide, enforced disappearances, extrajudicial killings, gender-based violence, torture or forced displacement. In addition, the military justice system would be entirely independent of the military command structure in order to ensure that crimes within its jurisdiction never remained unpunished.

15. The objective of Bill No. 129 of 2014 was to regulate the use of force in armed conflicts by incorporating treaties concerning international humanitarian law in domestic legislation.

16. Bill No. 085 of 2015 developed the Military Criminal Code, reflecting the general jurisdictional provision enshrined in article 221 of the Constitution.

17. **Ms. Kalach** (Colombia) said that the Colombian authorities had adopted regulations in 2012 aimed at providing physical and psychological protection for victims and witnesses involved in proceedings under Act No. 957 of 2005 concerning former members of illegal armed groups. The regulations provided for risk assessments by specialized groups in different parts of the country. To date, a total of 545 individuals (250 men and 295 women)

had benefited from the protection programme. The Government had organized training courses and workshops for the members of the assessment groups and invested US$ 100 million in the programme between 2007 and 2015.

18. Decree No. 1225 of 2012 required the State to provide protection for members of the judiciary. The protection was provided jointly by the National Protection Unit and the National Police. In 2014 risk assessment studies had been undertaken on behalf of 144 members of the judiciary.

19. **Mr. Soler** (Columbia) said that all members of the police and military law enforcement agencies received theoretical and practical training, in line with their level of responsibility, in human rights and international humanitarian law. There were currently 600 qualified instructors, who operated throughout the country. The training provided by the army's 27 training squads took into account the ethnic and sociological scenarios in the different regions.

20. Between 2009 and 2014 curricular training had been provided for 1,182,567 members of the police and military law enforcement agencies and extracurricular training had been provided for 1,214,033 officers.

21. Article 14 of Act No. 48 of 1993 required all Colombian males to perform military service on reaching the age of majority. The Constitutional Court, in its judgement C-879 of 2011, had stated that persons who failed to enlist for military service could not be detained for long periods by the military authorities in order to force them to enlist. It had cited in that connection article 216 of the Constitution. He added that young men under 18 years of age were never recruited by the armed forces or the police.

22. The Government had adopted strict measures to guarantee the investigation and prosecution of any public official who engaged in illegal and unconstitutional conduct. The Ministry of Defence, in conjunction with the President and the military authorities, had established procedures to ensure transparency in that regard. Armed Forces Directive No. 208 of 2008 provided for 15 measures to prevent the commission of homicide or aggravated homicide against protected persons. The Office of the United Nations High Commissioner for Human Rights (OHCHR) had monitored 6 of the 15 measures in 2011 and 2012, visiting more than 25 military units.

23. The policy on impunity aimed to facilitate the work of justice administration with input from the military forces and the police, in accordance with the needs of prosecutors, judges and disciplinary authorities. Two directives issued in 2007 required all commanders to send investigative police officers to the scene of clashes in order to secure evidence; in addition, a committee had been set up to investigate complaints and strengthen prevention measures. A post of liaison officer had been created in the Armed Forces for the sole purpose of working with the Counsel General's Office and the Attorney General's Office to speed up investigations by helping to locate members of the Armed Forces who were under investigation and to obtain evidence. As of December 2014, 800 members of the Armed Forces had been convicted for homicide of a protected person and aggravated homicide.

24. **Mr. Rodríguez** (Colombia) said that the demobilization of paramilitary structures and Fuerzas Armadas Revolucionarias de Colombia (FARC) groups was part of the transitional justice process under Act Nos. 975 of 2005 (Justice and Peace Act) and Act No. 1592 of 2012. It was a process that permitted Colombian society to take stock of what those groups had done, especially the paramilitary groups. In addition, the Supreme Court had handed down numerous convictions against members of Congress in the *parapolítica* affair, which had exposed the lives between politicians and paramilitary groups.

25. The number of sentences handed down was only one criterion for evaluating the transitional justice process, which had been of enormous value to the families of the

disappeared. Without it they would never have known the fate of their loved ones. More than 5,800 bodies had been found, in 4,500 common graves. More than 2,000 had been returned to their families and 900 more were awaiting return.

26. The extradition of paramilitary leaders to the United States in 2008 had not been an abdication of Colombian sovereignty but had been carried out in the framework of international law on drug trafficking. Colombia and the United States had agreed on procedures to enable those leaders to continue taking part in the transitional justice process.

27. **Ms. Herrera Moreno** (Colombia) said that the Victims and Land Restitution Act of 2011 had been a milestone in the legal and political history of Colombia inasmuch as it recognized the existence of the armed conflict and its victims. Under the Act the Central Register of Victims had been established as a mechanism for ensuring the dignity and historical memory of those who had suffered the effects of the war. More than 7 million victims had been recognized and more than 5.6 million deemed to be eligible for support and reparation. Of those registered, 86 per cent were victims of forced displacement. In all, 14 per cent of the country's population had suffered some form of victimization. In that regard Colombia was setting the standard in terms of victim recognition and reparation.

28. Comprehensive reparation involved not only financial compensation but an attempt to redress all the harm suffered, through measures to ensure return and resettlement, rehabilitation and guarantees of non-repetition. The Victims Unit had provided compensation to 500,000 victims, and over 300 groups or communities had been recognized as eligible for collective reparation. The Ministry of Health had set up a health observatory for victims of the armed conflict as part of the Compulsory Health Plan to guarantee victims psychological and psychiatric care. Return and resettlement where restitution of land was not possible was another form of reparation.

29. One of the guarantees of non-repetition under the Victims and Land Restitution Act was the prevention of illegal recruitment of children and adolescents. The intersectoral commission set up in 2007 worked with the National Economic and Social Policy Council (CONPES) on publicity campaigns for children and adolescents, strengthening family and community networks and providing leisure activities, all of which helped to prepare children to resist recruitment. In addition a special protocol had been issued in 2014 on involving child victims of the conflict in decision-making and the formulation of preventive measures.

30. Fonseca (Colombia) said that the Special Representative of the Secretary-General on Sexual Violence in Conflict had invited Colombia to share the results of its work on the issue of sexual violence with other States. The Government's policy on equity for women included the Comprehensive Plan to Guarantee Women a Life Free from Violence, which provided a framework for action. The Plan took a three-pronged approach, focusing on prevention, coordination and support, and progress had been made in the past year by including the gender perspective in the protocols of prevention and support, running awareness-raising and information campaigns and strengthening the mechanisms for intervention. The national committee to combat violence against women had been strengthened and a plan for the investigation of sexual violence against women had been implemented. Justice officials had received training to help them deal with sexual violence and understand the importance of the issue. The Attorney General had designed and implemented special protocols specifically for the investigation of sexual violence. The measures taken had had a very positive impact, as shown by the rise in the number of complaints, an increase of 20 per cent between 2013 and 2014.

31. **Ms. Herrera Moreno** (Colombia) said that women victims of sexual violence in the context of the armed conflict accounted for nearly 50 per cent of all victims. Given the psychological obstacles to reporting such offences, including fear of retaliation, the

decision not to set a time limit on bringing a complaint had been a major step forward in dealing with their cases. Around 10,000 victims of offences against sexual freedom and integrity had been registered to date and a special strategy for comprehensive reparation had been developed and was being applied in seven regions of the country. A strategy for emotional recovery had also been put in place in coordination with women's organizations as part of the Interweaving (*entrelazando*) programme.

32. Special sessions at which women victims of sexual violence could make statements and bring complaints had been organized in cooperation with the Attorney General's Office, the Ombudsman's Office and women's organizations, and with support from international cooperation. Under Act No. 1719 of 2014 measures had been put in place to ensure access to justice for victims. Sexual violence in the context of armed conflict had been defined as a crime against humanity and was not subject to the statute of limitations.

33. **Ms. Kalach** (Colombia) said that under the Criminal Code trafficking in persons was defined as a crime subject to between 13 and 23 years' imprisonment. The rights of victims of trafficking had been defined in Act No. 985 of 2005, under which an inter-agency commission on comprehensive support for victims and a special body to deal with trafficking in children and adolescents had been established. Colombia was working with the United Nations Office on Drugs and Crime (UNODC) in dealing with the issue.

34. The commission had set up departmental committees to facilitate victims' access to mechanisms to assert their rights and obtain appropriate support. There were few formalities; the Ministry of the Interior was responsible for taking complaints and referring them to the relevant bodies, including the courts. The departmental committees had been trained to understand what tools they had at their disposal to help in dealing with complaints. The Government coordinated with various NGOs and in 2014 the Attorney General's Office had created five special prosecutors to deal specifically with trafficking in persons.

35. **Mr. Modvig** (Country Rapporteur) said that he welcomed the inclusion of a medical specialist in the State party's delegation. It was an indication that the medical aspects of torture were taken seriously. He was concerned that the statute of limitations of 30 years still seemed to apply to the offence of torture, and cruel, inhuman or degrading treatment did not constitute a specific crime in Colombian law. Discrimination was mentioned but not coercion and intimidation.

36. The State party had acknowledged the challenge it faced regarding the situation in prisons but he would appreciate more precision concerning the standards that were being implemented with regard, for example, to capacity-building and renovation of prisons. He would like to know when all women prisoners would be housed in all-female prisons. He wondered how many complaints from prisoners had actually been received; he would have expected all prisoners to complain about prison conditions as they had been described.

37. He still needed to ascertain whether the right to a medical examination was a basic safeguard; also, was a medical examination compulsory in connection with detention in isolation? It was commendable that there should be a compulsory medical examination on admission to prison and that the findings were recorded, but he wondered whose responsibility it was to oversee those records and what provision there was for follow-up treatment. In general, he wondered when health care would reach an acceptable level in Colombian prisons.

38. He was still not clear as to when the military were empowered to assist the police in upholding law and order and making arrests. Were the military authorized to make arrests in flagrante delicto and, if so, how many arrests had they made in the demonstrations where some 90 police officers had been injured? With regard to the question of failure to register

for military service, he would like to know how many young men had been detained for that reason and for how long. Did they enjoy basic legal safeguards?

39. He found it reassuring that an effective mechanism for investigating and prosecuting extrajudicial killings was in place. He wondered when the 3,700 cases currently under investigation might be expected to reach a conclusion.

40. The figure of 7 million victims of the armed conflict registered was very impressive. He noted that 5.6 million were eligible for redress of some kind but he wondered whether the package available in fact included full reparation or only psychosocial counselling and land restitution. Access to the health-care system was important but, as the Committee pointed out in its general comment No. 3, the complex nature of the sequelae of torture meant that the general health system was not suitable for dealing with torture victims. Justice was also part of full reparation and he would like clarification of the link between the registration of victims and access to justice in terms of the conviction of perpetrators. He would also like to know how the guarantees of non-repetition were actually applied.

41. Statistics were one way of measuring the success of the programme but he wondered what content-related criteria were applied, such as recovery from trauma, full financial compensation, and the conviction of perpetrators. Indicators of that nature would help the Government to see whether its enormous investment was yielding returns.

42. He commended the Government on its efforts to clean up the Administrative Security Department (DAS). What was the current status of that process? Had DAS been dismantled or was it still in place with new personnel? What kind of oversight had been put in place for the service? Did Parliament have any control over the intelligence service?

43. With regard to the transgender population, he understood that, in order to obtain access to surgery, transgender persons were required to undergo psychiatric diagnosis. He wondered whether it was really desirable to view their situation as a pathological condition subject to diagnosis as an illness in order to qualify for surgery.

44. **Ms. Belmir** (Country Rapporteur) said that it was important to bear in mind that the judiciary was a branch of government with its own status and that judges had a special function and enjoyed certain immunities. She had the impression that in Colombia the judiciary had been relegated to rather low status, beneath the police and DAS, for example. She could find no acknowledgement of the fact that judges were subject to threats and intimidation when members of the police or the intelligence service found themselves under investigation. She wished to point out that the extension of military jurisdiction to try civil cases was contrary to international law and that in other countries every effort was being made to stipulate that the military were not competent to try civil cases. If the State party seriously wished to reinforce the judiciary, it must involve those who worked in it and listen to what judges had to say.

45. Victims who were members of indigenous and Afro-Colombian communities received little support from the criminal justice system. There had been some reparation by way of restitution of land, but Afro-Colombian and indigenous women had been threatened and sexually abused for claiming restitution of their land.

46. As to the question of children in conflict, she wondered how children could be expected to resist recruitment by the Armed Forces or illegal armed groups on their own. The armed groups occupied schools and girls were prey to sexual violence: those were serious war crimes on the part of illegal armed groups and the Armed Forces.

47. **Mr. Bruni** said that some problems affecting the prison system, such as routine abuse of prisoners, could be addressed without large financial outlays or complex and time-consuming planning. In that connection, he wondered whether the delegation could provide information about the efforts made to implement a 2014 decision of the Constitutional

Court, which had given the Valledupar prison 11 months to put an end to the arbitrary abuse of prisoners or face closure. He called upon Colombia to consider ratifying the Optional Protocol to the Convention against Torture, as doing so could help it solve the many problems in its prison system. He would appreciate information on the country's plans in that regard.

48. **Mr. Gaye** said that three points he had raised seemed not to have been addressed. He had enquired about the assistance of counsel not so much for persons who were already in prison as for those who had just been arrested, since article 303 of the Colombian Code of Criminal Procedure, which ensured that persons who were arrested were entitled to meet with counsel without delay, struck him as insufficiently precise. He therefore asked exactly what the police did when people they had just arrested insisted on their right to be assisted by counsel. Did they wait for counsel to arrive or did they simply proceed with the interrogation?

49. He reiterated the Committee's request for an indication of the number of cases of refoulement, extradition and expulsion that the State party had carried out during the reporting period on the basis of diplomatic assurances, as well as information on any instances in which the State party had offered such diplomatic assurances. Since the Committee's question about any measures taken to implement article 5 of the Convention did not appear to have been answered, he asked whether acts of torture were considered crimes under domestic law, wherever they occurred and whatever the nationality of the perpetrator or victim.

50. **Mr. Domah** said that the large number of persons in pretrial detention was alarming and recommended addressing the problem urgently and imaginatively. Alternatives to detention, such as electronic bracelets and community service, should be encouraged. Building more prisons could not be the sole solution to the problem of overcrowding. He asked whether a person taken into custody over the weekend was brought before a judge within 36 hours, as required under the Code of Criminal Procedure. He wished to know what use judges tended to make of their considerable discretion to order the release of detainees and whether the State party had considered creating a framework for the use of that discretion. Lastly, he asked whether judges and prosecutors, as well as law enforcement officials, were given proper training on their responsibilities under the Convention, especially as they related to vulnerable groups.

51. **Ms. Gaer** said that the Special Representative of the Secretary-General on sexual violence in conflict had referred to the State party's efforts in that area as a source of inspiration for the region and the world. It would be interesting to know, however, whether the delegation had any further insight into possible ways of dealing with the country's culture of silence and denial, which the Special Representative had also mentioned. She asked for information on any sanctions imposed on Colombian officials of any rank who had placed human rights defenders at risk by making public statements critical of them. Since military units often provided protection to judicial personnel, it would be interesting to know whether similar protection was provided to the personnel of the human rights units of the Attorney General's Office.

52. **The Chairperson** said that he wished to know how many people had been dismembered in the so-called "chop houses" (*casas de pique*) of Buenaventura. It would be interesting to know more about the results of investigations into the alleged murders of young men whose bodies were presented as those of guerrilla fighters killed in combat in order to collect bounties. He had just read in the newspaper that the former head of the dissolved Administrative Security Department had been given a 14-year prison sentence for, among other things, persecuting human rights defenders. He voiced concern about the Colombian authorities' decision to deport two Venezuelan political activists to the Bolivarian Republic of Venezuela, where they were reportedly being held in a notorious

prison known as La Tumba. He commended the recent decision to establish a commission to monitor conditions of detention and asked whether it was currently meeting, who its members were and what its role was. Information about whether the Attorney General's Office carried out special investigations in the prison system would be welcome. Lastly, he asked whether the State party had special protocols in place for the investigation of what, according to reports, were large numbers of murders committed on account of the victims' sexual orientation.

53. **Ms. Belmir** asked to what extent judges were involved in decisions regarding the medical treatment of persons with disabilities and their stay in prisons, hospitals or other institutions. Did such persons have the right to appeal decisions affecting them?

The meeting was suspended at 5.15 p.m. and resumed at 5.30 p.m.

54. **Ms. Abadía Cubillos** (Colombia) said that since 2011, the Prison Services Unit, which had been spun off from the National Prisons Institute, had administered the budget for the construction of prison facilities. Ensuring the separation of male and female detainees was a problem, but rules on separation had been put in place, and efforts were being made to take different approaches to male and female prisoners. Females detained in prisons not specifically for women were assigned to women-only blocks, and provisions was made for childcare. She acknowledged that investigations of complaints filed by detainees, both disciplinary and criminal, were excessively slow. Joint strategies were being developed by the Attorney General's Office, the Ministry of Justice and Law, the Ministry of Defence and the National Police to combat the crime culture in the prisons, where extortion rackets, run by both prisoners and guards, were all too common. The use of devices to jam mobile phone signals was currently being tested.

55. Detainees were entitled to a medical examination by a doctor of their choosing. As the Constitutional Court had noted, however, there were severe shortcomings in the provision of basic health services to the prison population, most of them relating to a shortage of medical personnel. A newly created provident fund would assume responsibility for contracting for prison health services once the decree establishing it had been signed by the President. Inter-agency round tables had been set up in an effort to respond swiftly to urgent problems.

56. **Mr. Valdés** (Colombia) said that to help it fulfil its role as an auxiliary to the administration of justice, the Institute of Forensic Medicine had developed a set of procedures and handbooks, which could be consulted on the Institute's website. They drew on the Minnesota and Istanbul Protocols, as well as on protocols developed in Colombia. Starting in mid-2013, Institute personnel, as well as doctors performing their obligatory social service, had received training in areas relating to the Institute's work. As a result, the number of investigations of cases of torture had increased. In 2014, for example, when investigating the treatment of prisoners, the Institute had applied the Istanbul Protocol on more than 2,000 separate occasions. The Minnesota Protocol, a model protocol for a legal investigation of extra-legal, arbitrary and summary executions, had been used 125 times. In recent years, the Institute had also provided increased scientific support for the investigation of cases of alleged sexual violence, particularly among persons affected by the armed conflict. Other services provided by the Institute included performing medical examinations of persons who had been detained by the police and evaluating injuries resulting from gender violence.

57. A pathology screening was not generally required for a sex change. The particular clinic performing the surgery could require a mental health screening, however, as the surgery was irreversible. Regarding the "chop houses", he said that as a result of coordinated work by a number of public institutions, including the Institute of Forensic Medicine, several victims had been identified and the investigations were well under way.

Lastly, he wished to reassert his conviction that, as the peace process continued, scientific fact should facilitate the administration of justice.

58. **Ms. Abadia Cubillos** (Colombia) said that the Constitutional Court's orders regarding prison conditions had targeted the High Council on Criminal Policy, which was composed of the Attorney General, the Counsel General, the Minister of Justice, representatives of the National Police, the National Prisons Institute and the Prison Services Unit, the Minister of Culture and the Minister of Health and Social Protection. That had been a step forward, as it had required the authorities to work in concerted fashion. An action plan would shortly be sent to the Constitutional Court.

59. When the courts ordered the closure of a prison, overcrowding was exacerbated, as the prisoners had to be transferred to other prisons. One of the short-term responses was therefore to form what was referred to as judicial brigades, teams of legal personnel that visited the prisons and sought release on probation for the detainees who were entitled to it. A bill on alternative sentencing, currently being prepared, was another measure designed to reduce prison overcrowding, which was mostly the result of the large numbers of persons in pretrial detention.

60. **Mr. Rodriguez** (Colombia) said that torture had been made a separate offence in Colombian law. Resolving the cases of extralegal execution was a considerable challenge for the Colombian justice system, as more than 2,000 such cases were currently open. More than 5,000 members of the Armed Forces had been implicated in them. Some 900 convictions had been handed down.

61. The Administrative Security Department (DAS) had been replaced by intelligence services that were answerable to the legislative branch of government. Civilians were not tried by military tribunals. Judicial personnel formed associations and thereby made themselves heard in Colombian society. Colombian law provided for such alternatives to detention as electronic tagging. It was true that judges could exercise discretion, but that exercise was regulated. They could not issue arbitrary rulings. The human rights units of the Attorney General's Office were escorted by security personnel when necessary. The Supreme Court had indeed sentenced the former head of DAS to a lengthy prison term. As part of the same decision, it had given an 8-year sentence to the former General Secretary of the Office of the President of the Republic. They had persecuted judges, opposition politicians and journalists investigating the officials suspected of colluding with paramilitary groups.

62. **Mr. Soler** (Colombia) said that the National Police and the armed forces, which operated under the Ministry of Defence, brought any persons they detained in flagrante delicto before a judge within 36 hours. Closed congressional committees, provided for by the Intelligence Act, supervised the State's intelligence activities.

63. **Ms. Abadia Cubillos** (Colombia) said that the Colombian authorities were well aware that there were considerable shortcomings at all levels of the Colombian State and were therefore looking forward to the Committee's observations and recommendations. She would be glad to submit written replies to the questions that there had not been time to answer.

The meeting rose at 6 p.m.

United Nations CAT/C/SR.1310

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture
Fifty-fourth session

Summary record of the first part (public)* of the 1310th meeting
Held at the Palais Wilson, Geneva, on Monday, 4 May 2015, at 10 a.m.

Chairperson: Mr. Tugushi (Vice-Chairperson)

Contents

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Third periodic report of the former Yugoslav Republic of Macedonia

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1310/Add.1.

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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In the absence of the Chairperson, Mr. Tugushi (Vice-Chairperson) took the Chair.

The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Third periodic report of the former Yugoslav Republic of Macedonia (CAT/C/MKD/3; CAT/C/MKD/Q/3; HRI/CORE/MKD/2013)

1. *At the invitation of the Chairperson, the delegation of the former Yugoslav Republic of Macedonia took places at the Committee table.*

2. **Mr. Ristovski** (The former Yugoslav Republic of Macedonia) said that strengthening the independence of the judiciary was a priority for his Government. Constitutional amendments were therefore under consideration to exclude the Minister of Justice and the President of the Supreme Court, who were currently serving as ex officio members, from the Judicial Council, and to raise the number of judges who sat on the Council. Other proposed amendments included introducing a mechanism to facilitate citizens' complaints against the violation by the authorities of rights under the Constitution.

3. Considerable funding had been earmarked for the implementation of the new Law on Criminal Procedure of December 2013, which would help to build the capacity of the Public Prosecutor's Office. Audiovisual equipment to record investigative proceedings of public prosecutors' offices had been procured as part of a project funded by the European Union under its instrument for pre-accession assistance (IPA). Extensive training on the application of the Law had also been provided to judges, public prosecutors, police detectives and lawyers. In addition, a manual had been published to introduce police officers and authorities involved in pretrial proceedings to the new provisions under the Law.

4. The Government was strongly committed to reform of the prison system and was focusing in particular on reducing overcrowding, building new facilities or upgrading existing ones and improving the treatment and rehabilitation of prisoners. It was implementing IPA projects to promote a Probation Service and the use of non-custodial sentences as alternatives to prison.

5. There were plans to introduce an independent external monitoring mechanism to ensure that the Ministry of the Interior demonstrated full respect for human rights, particularly while exercising police powers. Under the new law on the police, the weapons of police officers who were reported to the centres for social work as perpetrators of domestic violence were confiscated. Furthermore, perpetrators of domestic violence must undergo psychological treatment or counselling. An internal control section, the Sector for Internal Control and Professional Standards, had been put in place at the Ministry to monitor the work of police officers whenever cases of torture were reported. Another IPA project involved refurbishing a reception centre for foreigners. The Ministry had also initiated a project to build a new centre for foreigners in 2016, which would fully meet international standards.

6. Turning to judgements of the European Court of Human Rights involving the violation of article 3 of the European Convention on Human Rights, including *Jasar v. the former Yugoslav Republic of Macedonia*, he said that the authorities had taken comprehensive steps to prevent the recurrence of similar violations. The penalties for offences involving such violations were increased from a maximum of 5 years to a maximum of 8 years of imprisonment.

7. Amendments to legislation on the Ombudsman were aimed at bringing the national human rights institution into line with the Paris Principles. A new law on domestic violence

had been passed in 2014, the first of its kind in the country, which provided for a comprehensive and coordinated system for the prevention of such violence. The necessary training had been provided to professionals from social work centres and teams for the prevention of domestic violence composed of representatives of the centres, the Ministry of the Interior, health-care institutions and citizen's associations had been established. The national strategy on mental health sought to shift mental health care away from hospitals and to improve conditions in the psychiatric hospitals throughout the country.

8. Lastly, the Government had established an intersectoral body chaired by the Minister for Foreign Affairs, which coordinated the human rights work of all relevant ministries and government bodies with United Nations treaty bodies and other international organizations and presented proposals to improve human rights legislation in the Republic of Macedonia.

9. **Ms. Gaer** (Country Rapporteur) said that she welcomed the robust delegation with representatives from so many different ministries and the detailed report submitted under the new simplified reporting procedure. She commended the accession of the former Yugoslav Republic of Macedonia to the Optional Protocol, the establishment of the Ombudsman's Office, which was acting as the national preventive mechanism, and the regular visits received from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

10. While the Ombudsman had issued a number of interesting reports, various sources had expressed concerns over the effectiveness of the institution as a preventive mechanism. The delegation should provide a list of the Ombudsman's recommendations that had been implemented, as the Committee had been informed that most had not been carried out and that there was no formal procedure for them to be processed. There continued to be allegations of beatings of persons in detention by guards, overcrowding, unsafe and unhygienic conditions and poor maintenance of facilities.

11. There were continued reports of domestic violence and the lack of adequate funding to carry out action plans to end it. The Committee had also received reports of violence against the Roma, including an incident in May 2013 in Skopje involving some 50 police officers and the Alpha special police unit, who had allegedly used excessive force, injuring 10 people, including 3 women. She wished to know whether the incident had been investigated and whether anyone had been prosecuted. The lesbian, gay, bisexual and transgender (LGBT) community continued to be the target of hate crimes according to a number of reports. She asked what the Government had done to prevent violence against the community and protect the human rights defenders who acted on its behalf. There was a need for further statistical data on such violence, without which it was hard to assess the status of implementation of the Committee's recommendations.

12. Concerns had been raised over the current mass wiretapping scandal involving a series of alleged wiretapped conversations between the Prime Minister, the head of the secret service and other officials, in which they reportedly discussed the appointment of a judge, raising serious questions about political fairness. She wished to know what was being done to uphold the rule of law and independence of the judiciary.

13. Turning to the list of issues prior to reporting, she wished to know whether the definition of torture set out under article 142 of the Criminal Code covered the police, army and prosecutors. It was not clear what was meant by "official persons" and "person performing his duty". The delegation should state whether article 143 of the Code included persons who consented to or acquiesced in acts of torture or covered only the physical performance of such acts. As the Helsinki Committee for Human Rights of the Republic of Macedonia had noted in its report, not a single person had been pronounced guilty of

torture since the introduction of the amendments to the Code, while only a handful of persons had been found guilty of abuse. Was that information correct?

14. Further clarification was needed of the scope of the Law on Amnesty, in particular concerning the information provided in paragraph 10 of the periodic report that the Public Prosecutor's Office had "renounced" further prosecution in the four cases against persons who had been prosecuted for crimes related to the 2001 conflict. She would appreciate an update on the status of the cases, which had been before the International Criminal Tribunal for the Former Yugoslavia, including the National Liberation Army (NLA) leadership case. She wondered whether the Tribunal had been informed that they had been dropped. She would also appreciate information on the allegations of the abduction of 12 ethnic Macedonians and 1 Bulgarian national by the National Liberation Army and 6 ethnic Albanians believed to be the victims of enforced disappearance during the armed conflict.

15. Referring to the figures cited in paragraph 11 of the periodic report, she asked why the number of convictions for the crime of mistreatment had been so low, with no cases reported in 2011 and 2012. She wished to know whether the few officials who had been convicted were still currently serving in the prison system.

16. Turning to the issue of the lack of an independent and external oversight mechanism to monitor police conduct, she would be grateful if the delegation could comment on a United States State Department report that the Sector for Internal Control and Professional Standards of the Ministry of the Interior had pressed charges against only 1 officer while there had been 46 complaints, which was attributed to the public prosecutor's shared "solidarity with police officers". The delegation should also comment on the report by the European Committee that the Sector did not have a dissuasive effect on the actions of the police and that it lacked independence.

17. She asked what measures were being taken to ensure that the recommendations of the Ombudsman were legally binding and that the Office was adequately funded. As the information provided by the Ombudsman suggested that there had been an increase in the number of complaints, she wondered what had been done to address them. Lastly, further details were needed of the case referred to in the report of the Helsinki Committee and the Ombudsman involving a prisoner who had allegedly sustained such severe injuries caused by a prison guard in Skopje that a kidney and the spleen had had to be surgically removed. The officer reportedly had been sentenced to a prison term of 18 months. The delegation should comment on reports that the prison guard had remained in his post while appealing against the sentence and state whether he was still working as a prison guard at the present time. She also wondered whether the victim had received any redress.

18. **Mr. Domah** (Country Rapporteur) said that the constitutional complaints mechanism mentioned by the delegation was too timid. He would prefer to see a Constitutional Court that was vested with the power to hear complaints from citizens of violations of the rights guaranteed under the Convention. He wondered why the State party had been so reluctant to act on the recommendation of the Committee in its previous concluding observations that training programmes should be introduced for medical personnel for the identification and documentation of cases of torture and rehabilitation of victims. He also wondered whether the provisions under article 10 of the Convention regarding the prohibition against torture were fully included in the training of law enforcement personnel, medical personnel and other persons involved in the treatment of persons subject to arrest, detention or imprisonment.

19. There had been reports of the executive and judicial branches of government colluding to protect perpetrators of acts of torture. In its 2008 concluding observations, the Committee had noted that the "Alfi" special police unit was going to terminate its activities. The continued existence of that body, albeit under a different name, suggested that the

Government was not properly fulfilling its obligations under the Convention. The national authorities had failed to investigate a number of serious complaints relating to the activities of that unit, including the harassment of an opposition party politician and the extraction, under duress, of confessions from unaccompanied Roma children.

20. With reference to article 14, he asked for information on measures taken to raise public awareness of the right to file complaints of torture and ill-treatment against law enforcement officials, compensation awarded to victims of police violence and plans to carry out prompt, impartial and independent investigations into all allegations of torture and to provide victims with due reparation. He asked what the outcome of the publication of a number of European Court of Human Rights judgements relating to breaches of the Convention for the Protection of Human Rights and Fundamental Freedoms by the State party had been and whether the victims in question had received compensation.

21. Turning to article 15, he asked for assurances that domestic legislation prohibiting the admittance of evidence obtained through torture was fully and systematically applied and asked how many convictions had been secured through guilty pleas. Referring to article 16, he said that the sanctions for law enforcement officials guilty of the torture or ill-treatment of detainees were too lenient, and asked for examples of official regulations prohibiting such conduct.

22. The poor conditions in which pretrial detainees were held in the State party were linked to overcrowding. Detainees were sometimes denied access to medical care. The number of complaints made to the Helsinki Committee for Human Rights had increased but nothing had been done to address the concerns expressed by that body, which had been prevented from carrying out prison visits since 2012. The Committee had received complaints relating to the failure of the authorities to provide detainees with safe drinking water and basic necessities. He asked for information on the death of a seriously ill detainee, who had been transferred to Idrizovo prison following a breach of medical confidentiality in another penitentiary establishment.

23. The national authorities had detained many irregular migrants simply in order to gather evidence against traffickers in persons. Unaccompanied child migrants were not afforded special treatment when detained and no distinction was made between migrant workers and asylum seekers. He expressed the hope that the State party would not use the issue of national security as grounds for the expulsion of asylum seekers. There had been reports that inmates at the Gazi Baba Reception Centre for Foreigners were being held in appalling conditions for periods of one to six months. Many migrants were taken back to the border or returned to third countries without having had access to a proper adjudication system. He asked whether the State party intended to set up a humane protection mechanism in that regard.

24. He asked whether reports that there had been an attempt to cover up the persistent sexual abuse of minors held for long periods of time at the Tetovo Educational and Correctional Institution were true. There had also been reports of unaccompanied minors being taken directly from immigration posts to the Gazi Baba Reception Centre for Foreigners.

25. Lastly, he asked what steps had been taken to ensure that measures to combat domestic violence were results-based and effective and whether a strategy had been developed to achieve the relevant goals through coordination and a comprehensive approach. A number of women had died as a result of domestic violence in 2014 and 2015. The perpetrators had been known to the authorities as habitual reoffenders and those cases would not have occurred if the State party had acted to tackle the issue. The lax attitude of the authorities discouraged victims of domestic violence from stepping forward.

Specialized training on domestic violence must be provided to social workers, medical doctors and judicial and investigative officials.

26. **Mr. Bruni** asked whether media reports that 1,600 detainees were being held at Idrizovo prison (a facility with a capacity of 800 prisoners) were true. He asked why, despite the efforts of the State party to improve the situation and the significant funding provided by the Council of Europe Development Bank, conditions of detention at that facility remained poor and when work to renovate the prison would be completed.

27. Turning to the issue of detention facilities in police stations, he asked what the impact of the recommendations made by the Ombudsman's Office following its visits to such units had been and whether the recommendations were implemented. According to the Ombudsman's Office, despite Kumanovo police station having been earmarked for renovation, there had been no improvement in conditions of detention at that location. He asked whether the State party's plans to renovate and rebuild places of deprivation of liberty covered detention facilities located in police stations and, if so, what did the national authorities intend to do to improve the situation at those facilities?

28. **Mr. Zhang** asked for information regarding training on human rights instruments for military officials. He also asked for clarification of the term "means of coercion" employed in the State party's report (CAT/C/MKD/3) in the context of police training and requested information on specific cases in which the domestic courts had ruled out the use of evidence obtained through torture.

29. **Mr. Modvig** (Follow-up Rapporteur) asked for information on the number of cases of torture registered with the Public Prosecutor's Office and on the participation of doctors in prison visits of the national preventive mechanism. With reference to article 10, he asked how and when the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) would be implemented. He also asked whether the State party intended to transfer responsibility for the prison health-care system to the Ministry of Health, why the number of detainees and pretrial detainees had increased dramatically since 2000 and when the non-custodial measures implemented by the national authorities would start to have an impact on overcrowding in detention facilities.

30. **Ms. Pradhan-Malla** asked how Parliament and the judiciary would be informed of the Committee's concerns, how many women's prisons had been set up and how the specific needs of women detainees were catered for. She requested clarification relating to conflicting data on the number of cases of domestic violence against women and information on how the quality of protection had been improved. She asked whether the Criminal Code covered all forms of violence against women (in particular, sexual, domestic and psychological violence). She asked for information on public awareness campaigns to encourage women to report violence and the assessment of those campaigns. She also asked how many centres had been set up for victims of violence and torture and whether an accelerated abortion procedure had been put in place for women whose lives were at risk as a result of pregnancy.

31. She repeated the questions contained in paragraphs 11 and 13 of the list of issues (CAT/C/MKD/Q/3) and asked for additional information on the status of a number of cases of trafficking in persons referred to in paragraph 52 of the State party report (CAT/C/MKD/3). She also asked whether domestic legislation criminalized victims of trafficking in persons and whether training on trafficking in persons included a gender element.

32. The Chairperson, speaking as a member of the Committee, asked what had been done to address the mistreatment of detainees, inter-prisoner violence, poor material conditions, physical abuse of detainees by staff, the lack of a secure environment for special

categories of offender, overcrowding and insufficient health-care provision at Idrizovo prison.

33. He asked whether the planned relocation of the Tetovo Educational and Correctional Institution had taken place and requested information on the outcome of the investigation of a case of the rape of a minor at that establishment. More should be done to ensure that detainees at the Institution had access to education and purposeful daily activities.

34. Facilities used to house irregular migrants were plagued by chronic overcrowding, inter-inmate violence and allegations of ill-treatment by staff. He asked what was being done to improve that situation and why unaccompanied minors were held in custody with adult detainees when the relevant legislation stated that the social services must be contacted, a guardian appointed and the minor referred to an appropriate institution.

35. **Ms. Gaer** asked the delegation for its reaction to the comments on deteriorating conditions at Idrizovo prison contained in paragraph 8 of the 2011 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to the State party. She asked what measures had been taken to improve the management of the prison and staff training.

36. With reference to article 3, she asked whether the recent introduction of the Law Amending and Supplementing the Law on Asylum and Temporary Protection had helped to improve asylum procedures, first instance decisions and the process of determining refugee status. She asked how the term "exceptional cases" was interpreted when deciding which cases would be dealt with under the accelerated procedure and requested statistical data on the number of such cases. She asked what had been done to deter border officials from marking the passports of Roma and ethnic Albanians in order to curtail their movements, how many asylum applications had been received annually since the previous report, how many of those applications had been granted and what the grounds for rejection of applicants had been.

37. She asked whether it was true that, in 2012, out of 638 applications for asylum in the State party, none had been granted, how many asylum applications had been granted in the interim, what steps had been taken to ensure documentation was provided to asylum seekers and how access to asylum procedures and a fair, individual assessment of asylum applications were ensured.

38. She asked whether gender-sensitive measures had been adopted as a part of asylum procedures and requested data for the reporting period and for 2013 and 2014 on the total number of asylum applications and successful applications, as well as on illegal border crossings. She asked why the number of applicants for asylum had increased dramatically in 2012 and whether that trend had continued.

39. The Committee required information on the application of domestic legislation on refoulement to ensure that all individual cases were considered and all procedural safeguards were, in practice, provided to the person returned. She asked whether there had been any cases of a person not being returned to a country because of a risk of torture.

40. She asked whether guardians were immediately appointed for unaccompanied minors who had illegally entered the State party and, if so, how many guardianships had been established since the previous report, what the monitoring procedure was relating to such guardians, how long related custody proceedings took and whether such minors had access to interpretation, education and legal aid. She also requested to be provided with statistics in that regard.

41. **Mr. Domah** said that the current dialogue offered an opportunity for the former Yugoslav Republic of Macedonia to reflect on whether it was taking the kind of principled action that would improve conditions within the country. He was concerned that civil

society organizations had been presented with a completed copy of the State party report (CAT/C/MKD/3) but that they had not been consulted during the drafting stage. It was important to acknowledge the positive role of civil society as guide, conscience and helpers to governments in office.

42. Although reform of the judiciary and the creation of new institutions, including an Academy for Training of Judges and Public Prosecutors, had served to improve the efficiency of the justice system, the independence of institutions was still compromised because there was a perception that the judiciary was not independent. A major component of the independence of the judiciary was the independence of the bar, for which it would be essential to introduce independent training of lawyers. The independence of institutions such as the Public Prosecutor's Office and the Ombudsman should also be guaranteed.

43. The State party report showed a number of measures that had been taken with respect to the rule of law but they seemed to stay within the realm of exhortation; there was very little to show that criminal, civil and administrative sanctions had been taken to deter the continuing commission of unlawful practices within the purview of the Convention. Not taking appropriate sanctions created a sub-culture, which defeated the purpose for which the laws had been passed. There appeared to have been very few cases where criminal proceedings had been instituted against several persons in cases where that would have been warranted.

44. **Ms. Gaer** (Country Rapporteur) recalled the Committee's request in paragraph 20 of the list of issues prior to the submission of the State party's third periodic report (CAT/C/MKD/Q/3) concerning the abolition of the "double criminality requirement for the crime of torture" and asked whether the principles referred to by the State party in response in paragraphs 88 to 93 of its report (CAT/C/MKD/3) had ever been applied.

45. In paragraph 38 (a) of the list of issues, the Committee had requested the State party to indicate what measures had been taken "to ensure that truncheons were removed from the premises of the Educational-Correctional Institution"; she wished to know whether statistics were available to demonstrate that the issue of truncheon use had been addressed.

46. Concerning the request for information on measures taken to strengthen the judiciary in paragraph 43 of the list of issues, the Ombudsman had stated that an analysis of data from casework showed that current reforms of the justice system were still not sufficient to ensure "protection of constitutional and legal rights". Non-governmental organizations had noted that the introduction of the new law on criminal procedure had been delayed; she wished to know whether it had been implemented and what other action had been taken to promote communication among the judiciary and to minimize delays in court proceedings.

47. With respect to protection of the LGBT community, she noted that, on 22 June 2013, more than 30 people were said to have attacked an LGBT support centre, where about 40 people had been watching a film: slogans had been shouted and stones and bottles had been thrown; one of the organizers had even received death threats. On 5 July 2013 there had been an attempted arson attack on the centre. She asked what action had been taken to conduct an investigation and to identify the attackers.

48. **The Chairperson** reminded members of the Committee that due care should be taken not to use abbreviations but to refer to the formal names of States parties in full and to use the formal name of "the former Yugoslav Republic of Macedonia" in all references made to that country.

The public part of the meeting rose at noon.